In the High Court of Judicature at Madras

Dated :: 04.11.2006

Coram

The Honourable Mr.Justice F.M.IBRAHIM L\KALIFULLA

W.P.Nos. 21658 and 21659 of 2001

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V.Anbalagan .. Petitioner in both WPs.

V

The Metropolitan Transport
(Chennai) Ltd. Rep by its Chairman
Pallavan House, Pallavan Salai
Chennai.2. Respondent in
W.P.No.21568 of 2001

1. R.Velaiputhiyavan, Managing Director

2. The Board of Directors
rep, by its Chairman
The Metropolitan Transport
(Chennai) Ltd. Rep by its Chairman
Pallavan House, Pallavan Salai
Chennai.2.

3. The State of Tamilnadu
by its Secretary
Transport Department
Fort St.George
Chennai.9 Respondents in
W.P.No.21569 of 2001

Writ petitions are filed under Article 226 of the Constitution of India for the issue of writ of Certiorarified Mandamus in W.P.21658 of 2001, praying to call for records of the respondent herein, made in Memo No.00198/PS(A)3/MTC/2001 dated14.09.2001 and quash the same and direct the respondent to promote the petitioner to the cadre of Manager, with effect from16.09.1989, the date of which the petitioner qualified for promotion to the cadre of Manager and in W.P.No.21659 of 2001 praying to call for the records of the third respondent pertaining to the order made in G.O.No.27 Transport (D) Department dated25.02.2000 in promoting the first respondent to the cadre of Manager and quash the same and direct the second respondent to promote the petitioner and the first respondent in the light of the judgment rendered in W.A.No.1542 of 1992 dated 24.08.2000 from the date of their qualifying service with all attendants benefits from the date of qualifying service till the second respondent passes order.

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For petitioner : Mr.M.Palani in both W.Ps.

For respondents : Mr. B.K.Girish Neelakandan GA for RR2& 3 in W.P.No.21659 of 2001
and respondent in W.P.No.21658 of 2001
Ms.Ojovathi shankar,
for M/s. Ramasubramaniam Associates for
R-1 in W.P.No.21659 of 2001

O R D E R

The petitioner is common in both the writ petitions. In W.P.No.21658 of 2001, the petitioner seeks to challenge the Memorandum No.00198/PS(A)3/MTC/2001, dated 14.09.2001, to quash the same and direct the respondents to promote him to the cadre of Manager with effect from 16.09.1989, the date on which the petitioner was qualified for promotion to the cadre of Manager.

2. In W.P.No.21659 of 2001, the petitioner seeks to challenge the order of the third respondent made in G.O.No.27, Transport (D) Department, dated 25.02.2000, promoting the first respondent to the cadre of Manager, to quash the same and to direct the second respondent to promote the petitioner in the light of the Division Bench Judgment in W.A.No.1542 of 1992, dated 24.08.2000 from the date of the qualifying service and with all attendance benefits.

3. The parties in these writ petitions will be referred to as per their status in W.P.No.21659 of 2001.

4. The brief facts which are required to be stated are that the petitioner joined the erstwhile Transport Department of the third respondent as Foreman on 13.09.1971; subsequently, the third respondent formed separate Transport Corporation called Pallavan Transport Corporation on and from 01.01.1972. As per the rules framed at the time of the formation of the State owned Transport Corporation, the petitioner is stated to have opted to join the State Transport Corporation and that he was stated to have entered into the service of the Pallavan Transport Corporation. Thereafter, he was promoted as Assistant Branch Manager on 01.01.1975. It is stated that subsequently, the Transport Department itself came to be wound up on and from 01.08.1975. The petitioner was promoted as Assistant Manager on 16.09.1975. He was further promoted as Deputy Manager on 18.10.1975 and by proceedings dated 04.07.1983, his promotion was treated to be reckoned for notional fixation of pay in that cadre with effect from 16.09.1982. By order dated 08.01.1993, he was promoted to the post of Senior Deputy Manager with effect from 05.01.1993.

5. Be that as it may, the first respondent was directly appointed as Assistant Manager along with four others by order dated 14.109.1976 and he is stated to have joined duty on 24.09.1976. He was subsequently promoted as Deputy Manager on 12.4.1982 and Senior Deputy Manager on 12.04.1993. The case of the first respondent is

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that by virtue of the Memorandum dated 04.07.1988, date of promotion in the post of Deputy Manager was reckoned for notional fixation of pay as on 24.09.1982. It is on record that the third respondent addressed a letter dated 10.03.1987 to the Managing Directors of all the Transport Corporation, wherein revised instructions were issued with regard to the Managerial cadre of State Transport undertakings. In that letter, inter alia, it was stated that the minimum period of service for promotion to the next higher grade in the Managerial cadre in the technical/traffic branch would be as under:

For promotion		Minimum period of service prescribed to become eligible for promotion
From	To	
Assistant Engineer (Supervisor)	Assistant Manager	Five years
Assistant Manager	Deputy Manager	Six years
Deputy Manager	Senior Deputy Manager	Four years
Senior Deputy Manager	Manager	Four years
Manager	Senior Manager	Seven years

6. In yet another communication dated 01.04.1987, the third respondent advised the Managing Directors of the various Transport Corporations as to the manner in which the inter-se seniority among the Deputy Managers for promotion to the newly introduced cadre of Senior Deputy Manager should be revised. The criteria so set out in the said letter dated 01.04.1987 was to the following effect:

> "19.A. The date of first appointment in the Assistant Manager Cadre should be base of determining seniority.
>
> B. A weightage of one year for every three years of past service in the supervisory cadre should be given for the Engineering graduates. As the span of service in the supervisory group is not much and to minimise the anomaly, a weightage of 4 months for every completed year of service in the supervisory group will be treated as one year, and the service below 6 months will be left out.
>
> C. For persons absorbed from Government deparments, no weightage for their service in the present department will be given, as they have been given sufficient weightage for their permanent absorption in the State Transport Undertakings.
>
> D. For Tamil Nadu State Transport Corporation (erstwhile) employees, their Tamil Nadu Public

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Service Commission seniority should be maintained.

E. A total service of 10 years in both the Assistant Manager and Deputy Manager cadre out of which a minimum two years of as Deputy Manager will be insisted upon as qualifying service for promotion as Senior Deputy Manager."

7. Some of the Deputy Managers who were aggrieved by the criteria fixed by the third respondent in its letter dated 01.04.1987 challenged the same in this Court by filing W.P.No.14449 of 1990, which came to be dismissed by a learned Single Judge by order dated 11.08.1992. Aggrieved by the same, the petitioners in that writ petition filed W.A.No.1542 of 1992. In the said Writ Appeal, the respective State owned Transport Corporations were not impleaded as parties, though the third respondent and the concerned Deputy Managers who came to be promoted as Senior Deputy Managers, were arrayed as parties. The Writ Appeal came to be allowed, by judgment dated 24.08.2000, to which I was also a party. The judgment in the Writ Appeal was the subject matter of challenge before the Supreme Court in Civil Appeal No.2921 of 2001 etc. Following the Division Bench judgment of this Court, W.P.No.21658 of 2001 was allowed and the promotion of the first respondent granted in the impugned order dated 25.02.2000 was set aside. The impugned order in W.P.No.21569 of 2001 was also quashed. But the learned single Judge held that the case of the petitioner can be considered only after framing necessary Service Rules in preparing seniority list on the basis of the Service Rules.

8. That order of the learned single Judge dated 21.02.2000 was also challenged in Civil Appeal Nos.3202 to 3204 of 2004. By a common judgment dated 12.9.2002, the Supreme Court set aside the judgment of the Division Bench of this Court and remitted the matter back for being disposed of afresh without going into the question of competence of the State Government. The judgment of the Division Bench of this Court was set aside mainly on the ground that the respective Corporations were not made as parties in the Writ Petitions and the Writ Appeal proceedings.

9. As far as the Civil Appeals filed by the third respondent as against the order of the learned Single Judge in these two Writ Petitions are concerned, the Supreme Court set aside the order of the learned single Judge dated 21.02.2002 and remitted the matter back to the learned Single Judge to await the decision of the Division Bench. That is how, these two writ petitions have been posted for hearing.

10. After the remittal order of the Supreme Court, the Division Bench heard the writ petitions after impleading all the different State owned Transport Corporations and rendered its judgment on 30.10.2003 in W.A.No.1542 of 1992. In the said judgment, the Division Bench has held in paragraphs 56 to 61 as under:

"56. The entry level post in the

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managerial cadre in these Corporations is that of Assistant Manager. The appellants were directly recruited at that level. The advertisement to which they had responded sets out the qualification and experience which a candidate had to fulfull, as B.E. Degree in Mechanical or Automobile Engineering and practical experience in an automobile workshop or stores for a period of not less than three years.

57. Persons directly recruited at the level of Assistant Managers are, therefore, persons who already had experience besides the academic degree. Persons promoted to that level from the supervisory cadre in the Corporation are also persons who have experience. However, there is no justification for giving any additional weightage for that experience, while promoting them to the post of Assistant Manager. Once they enter the cadre of Assistant Manager they have to rank, for the purpose of seniority, with reference to the date on which they entered the cadres of Assistant Manager placing the promotee Assistant Manager above those directly recruited prior to their promotion is clearly arbitrary and unjustifiable.

58. The promotional level above that of an Assistant Manager is Deputy Manager, for which the prescribed period of service is six years. The level above that of Deputy Manager is the post of Senior Deputy Manager. While effecting promotion to the post of Senior Deputy Manager, it would be wholly irrational to take into account the number of years of service rendered as Assistant Manager, instead of confining attention only to the period of service rendered as Deputy Manager.

59. All persons in the rank of Deputy Managers would have served for atleast six years as Assistant Managers. Once they enter the rank of Deputy Managers all of them are to be treated similarly and no discrimination can be made among them on the basis of the source from which they had entered the cadre of Assistant Manager. The discrimination made among the Deputy Managers while effecting promotion to the post of Senior Deputy Manager by requiring

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the direct recruit Assistant Managers to serve as Deputy Managers at least for four years while allowing person who had been promoted as Assistant Managers to serve only for two years as Assistant Manager, while effecting promotion to the level of Senior Deputy Manager, is clearly discriminatory and is wholly unsustainable.

60. All Deputy Managers belong to one common cadre, and their birth mark before they entered the cadre, disappear on their entry into that cadre. The criteria adopted has resulted in person who entered the cadre of Deputy Manager long after the directly recruited Assistant Managers had entered the cadre, getting promotion as Senior Deputy Managers despite the longer service rendered by the direct recruits in the cadre of Deputy Managers. Such discrimination is clearly unjust.

61. The criteria adopted, therefore, are clearly violative of the rights of the direct recruits to be accorded equal, fair and non arbitrary treatment in matters cocerning their promotions. Till the year 1987 promotions were being made on the basis of seniority list drawn up with reference to the date of entry into the relevant cadre. In that year, for the first time new criteria which is clearly discriminatory and which has resulted in the direct recruits being meted out an unfair and prejudicial treatment was evolved. On and after 1990 many persons for junior to the appellants in the cadre of Deputy Managers on the basis of the date of entry into that cadre, have been promoted ignoring the legitimate claim of the appellants."

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11. In the light of the Division Bench judgment dated 30.10.2003, when the challenges in these Writ Petitions to the impugned orders are considered, the submission of the learned counsel for the petitioner is that the rejection of the petitioner's representations dated 16.02.1998, 16.03.1999 and 13.04.1999 by the impugned orders dated 25.3.2000, wherein the reasons mentioned in the orders are on the ground that the earlier judgment of the Division Bench dated 28.04.2000 was thereafter taken on appeal to the Supreme Court and that the matter was sub-judice and therefore, the petitioner's grievance cannot be considered. One other reason given is that there was no vacancy for the post of Manager. Learned counsel for the petitioner contended that as far as the pendency of

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the Special Leave Petition is concerned, in the light of the subsequent order of the Supreme Court and the judgment of the Division Bench dated 30.10.2003, the said ground cannot stand in the way of considering the petitioner's claim for promotion.

12. As far as the non-availability of vacancy is concerned, learned counsel for the petitioner contended that in the affidavit filed in support of the Writ Petition No.21658 of 2001, the petitioner has specifically urged in ground Nos.(d) and (e) by furnishing the details relating to the retirement of some of the Managers between 1998 and 2001 in order to show that the vacancies were still available, but yet the petitioner's rightful claim was not considered.

13. Learned counsel for the petitioner also pointed out that in the counter affidavits filed on behalf of respondents 1 and 2, there was no specific denial as to the particulars mentioned by the petitioner in grounds (d) and (e), except a bald denial to the averments contained therein. Learned counsel for the petitioner would therefore contend that none of the grounds in rejecting the petitioner's representation would be acceptable.

14. For the very same reason, learned counsel for the petitioner contended that the promotion granted to the first respondent by the order impugned in W.P.No.21659 of 2001 is liable to be set aside and the petitioner should be granted the relief.

15. Learned counsel for the petitioner however fairly stated that the petitioner has retired on 31.08.2005 after the filing of the writ petitions, and therefore, while granting the relief, appropriate orders, may be passed for granting notional promotion and the consequential relief to be granted based on such promotion.

16. As against the above contentions raised on behalf of the petitioner, on the side of the respondents, as far as the third respondent is concerned, no counter affidavit has been filed, and in the counter affidavit filed on behalf of respondents 1 and 2, as rightly pointed out by the learned counsel for the petitioner, as far as the vacancy position is concerned, it has been averred in paragraph 15 of the counter filed by the second respondent, dated 01.02.2002 in W.P.No.21658 of 2001, it is merely stated that the said respondent was not aware of the reference made by the petitioner in ground (d) and, therefore, he was not in a position to comment about the same. The said respondent merely reiterated that there was no vacancy in the post of Manager and therefore, his communication dated 14.01.2001 to the petitioner, does not call for any interference.

17. In so far as the ground relating to the one covered by the Division Bench judgment, none of the respondents can have any say, in the light of the decision of the Division Bench, which stares at one's face.

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18. In the light of the above facts and submissions made by the respective parties, when the claim of the petitioner is analysed, on

the one hand, his grievance is as against the promotion granted to the first respondent in the proceedings dated 25.02.2000 and ; on the other, his grievance is also against the rejection of his claim for promotion by the impugned letter dated 14.09.2001.

19. When once the Division Bench in its Judgment dated 30.10.2003 categorically held that the criteria adopted by the respondents, namely giving any weightage to the services referred to in the post of Supervisors, Assistant Managers etc. was arbitrary and unsustainable, the said criteria fixed in the Government letter dated 01.04.1987 for promotion and followed by the second and third respondent granting promotion to the first respondent by taking note of his service as an Apprentice and as a Foreman between 1974 and 1982, cannot stand. Frther, it is not known how such service of the first respondent could have been considered at all by the third respondent, inasmuch as the first respondent came to be appointed in the cadre of Assistant Manager by way of direct recruitment by the order of the second respondent dated 14.09.1976. The said order makes it clear that he came to be appointed along with four others in the post of Manager in the cadre of Assistant Manager from the date on which they joined duty in the second respondent Transport Corporation. It is not in dispute that the first respondent joined duty only on 24.09.1976. In such circumstances, even on this ground, the order dated 25.02.2000 which considered the period between 1972 and 1974 when the first respondent had not even entered the services of the second respondent which weighed with the third respondent while granting promotion, was on the face of it, illegal and unjustified. Therefore, even on this ground the impugned order dated 25.02.2000 is liable to be set aside.

20. That apart, when the petitioner, the first respondent and similarly placed other Deputy Managers were issued with a Memorandum dated 04.07.1988, in which, their date of promotion to be reckoned for notional fixation of pay in the Deputy Managers Grade as well as actual promotion for reckoning their qualifying services for future promotion was stipulated, it was made clear that as far as the petitioner's case was concerned, 16.09.1982 was the date to be reckoned for notional fixation of pay in the Deputy Managers cadre, while in the case of the first respondent, it was 24.09.1982. Apparently, those were the dates in respect of the petitioner and the first respondent when they appeared to have satisfied the required number of years of services in the Feeder category of Assistant Manager. The said list having been issued and implemented for the purpose of time bound promotion, it will have to be held that going by the date mentioned therein, the petitioner was definitely senior to the first respondent.

21. In fact, there was one other person by name, K.Ramasamy who was senior to the first respondent and was next to the petitioner. Therefore, in the absence of any other shortcoming in granting promotion to the petitioner, the denial of promotion to the petitioner was thoroughly unjustified. Even in the rejection letter of the second respondent dated 14.09.2001, in and by which the petitioner's representation for promotion was not acceded to, the

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reasons mentioned were the pendency of the Special Leave Petition in the Supreme Court and non-availability of the vacancy in the post of Manager. As held earlier, in the light of the Division Bench judgment, dated 30.10.2003, the first ground no longer survives for consideration. As far as the non-availability of vacancy is concerned, since the respondents have not come forward with any tangible reason or details in support of the said stand, there is no reason to reject the claim of the petitioner on that score.

22. Further, in the petitioner's affidavit in W.P.No.21658 of 2001, the petitioner has furnished the names and the dates when the concerned individuals were promoted as Managers between 1992 and 2000 and the date of retirements of atleast five persons of, whom with reference to four, the petitioner has furnished the exact date of retirement. In spite of the furnishing of such specific particulars in ground (d) of the petitioner's affidavit in W.P.No.21658 of 2001, in the counter filed on behalf of the respondents, there was no specific denial. On the other hand the denial is as bald as it could be. Apparently, such denial seem to have been made for the purpose of depriving the petitioner of his lawful claim for promotion. The promotion is one's aspiration in his service career and in the absence of any black-mark in his service career, the authorities concerned cannot deny promotion which the petitioner is lawfully entitled to. Though it can be stated that one cannot claim promotion as a matter of right, when the petitioner's junior came to be promoted, that too, in an unjustified manner by taking into account the period during which such junior was not even in the service of the second respondent, there is no reason why the petitioner's claim for promotion should have been rejected without any rhyme or reason. Therefore, when vacancies were available atleast on 01.06.1998, 01.03.1999, 01.04.1999 and 01.03.2001 when M/s.N.Sabapathy B.Dhanakoti, P.Murugesan and S.Sainath retired as Managers in the second respondent-Corporation, it cannot lie in the mouth of the second respondent to say that for want of vacancy, the claim of the petitioner was liable to be rejected. The said ground when once turned out to be a false one and in the absence of any other stigma in the career of the petitioner in order to deprive him of his lawful claim for promotion, the action of respondents 2 and 3 in having denied such promotion to the petitioner was totally unjust and is liable to set right.

23. Though the petitioner would seek for setting aside the promotion granted to the first respondent, in W.P.No.21659 of 2001 while seeking for promotion through such a claim of the petitioner is also well founded, in view of the subsequent event that the petitioner himself has now retired from the services of the second respondent Corporation on and from 31.08.2005. It will be a futile exercise if the promotion accorded to the first respondent is interfered with. At the same time, it will have to be held that the petitioner's claim for promotion from the date when the first respondent came to be promoted, should be granted notionally in order to enable the petitioner to atleast reap the monetary benefit available to such post from the date when the first respondent came to be promoted. Therefore, I am of the view that though both the

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writ petitions deserve to be allowed and the relief be granted, in the light of the fact that the petitioner retired from his service on 31.08.2005, I do not propose to set aside the order impugned in W.P.No.21659 of 2001, while W.P.No.21658 of 2001 can be allowed and while setting aside the order impugned therein, namely, rejection of the petitioner's representation by proceedings dated 14.09.2001, respondents 2 and 3 are directed to pass orders granting notional promotion to the petitioner from 25.02.2000, that is the date on which the first respondent, the petitioner's junior came to be promoted and to grant all the monetary reliefs available to such promoted post of Manager from that date and quantify such relief in the form of arrears of salary payable to the petitioner, apart from implementing such monetary reliefs to the terminal benefits payable to the petitioner, pursuant to his super-annuation dated 31.08.2005.

24. In the result, W.P.No.21658 of 2001 stands allowed and W.P.No.21659 of 2001 is disposed of pursuant to the directions issued in W.P.No.21658 of 2001. Respondents 2 and 3 are accordingly directed to work out the benefits payable to the petitioner as per this order and pay the same within three months from the date of receipt of a copy of this order. No costs.

kvsg

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Board of Directors
rep, by its Chairman
The Metropolitan Transport
(Chennai) Ltd. Rep by its Chairman
Pallavan House, Pallavan Salai
Chennai.2.

2. The Secretary
Transport Department
Fort St.George
Chennai.9.

1 CC TO M/S D. PALANI, ADVOCATE SR 52232

Order in
W.P.Nos.21658 and 21659 of 2001
04.11.2006

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